

APPEAL NO. 030839
FILED MAY 15, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on March 3, 2003. The hearing officer determined that the appellant (claimant) was not in the course and scope of his employment at the time of the motor vehicle accident on _____; that the injury was not compensable; and that the claimant did not have disability. The claimant appeals this decision. The respondent (carrier) urges affirmance.

DECISION

Affirmed.

An injury is defined as "damage or harm to the physical structure of the body and a disease or infection naturally resulting from the damage or harm." Section 401.011(26). A compensable injury is "an injury that arises out of and in the course and scope of employment" Section 401.011(10). It was the claimant's burden to prove by a preponderance of the evidence that his injury was sustained while in the course and scope of employment. Generally, an employee is in the course and scope of employment if he engages in an activity that has to do with and originates in his work and is performed while engaged in the furtherance of the affairs or business of the employer. Section 401.011(12). However, a claimant is generally not in the course and scope while he is engaged in transportation to and from work, or "coming and going." Section 401.011(12)(A). If an exception to the coming and going rule applies, an employee must still show that he was engaging in the furtherance of his employment. Additionally, the term "course and scope of employment" does not include "travel by the employee in the furtherance of the affairs or business of the employer if the travel is also in furtherance of personal or private affairs of the employee" Section 401.011(12)(B). Exceptions to this "dual purpose" doctrine apply when the travel would have been made even if there were no personal affairs of the employee and would not have been made had there been no business of the employer to be furthered. *Id.*

Whether the claimant was engaged in an activity in furtherance of his employment at the time of the accident, thereby constituting an injury that occurred while in the scope of his employment, was a factual question for the hearing officer to resolve. Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. The hearing officer was not persuaded by the evidence that the claimant was furthering the affairs of the employer at the time he was injured and concluded that the claimant was not in the course and scope of his employment at the time of the accident, and that the claimant did not have disability because he did not sustain a compensable injury. Nothing in our review of the record indicates that the hearing officer's decision is so against the great

weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer decision and order are affirmed.

The true corporate name of the insurance carrier is **PACIFIC EMPLOYERS INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**MARCUS CHARLES MERRITT
6600 CAMPUS CIRCLE DRIVE EAST, SUITE 200
IRVING, TEXAS 75063.**

Chris Cowan
Appeals Judge

CONCUR:

Veronica Lopez
Appeals Judge

Robert W. Potts
Appeals Judge